

### § 416.1133

(c) *Your own household—not another person's household.* You are not living in another person's household (you live in your own household) if—

(1) You (or your spouse who lives with you or any person whose income is deemed to you) have an ownership interest or a life estate interest in the home;

(2) You (or your spouse who lives with you or any person whose income is deemed to you) are liable to the landlord for payment of any part of the rental charges;

(3) You live in a noninstitutional care situation as described in § 416.1143;

(4) You pay at least a pro rata share of household and operating expenses (see § 416.1133); or

(5) All members of the household receive public income—maintenance payments (§ 416.1142).

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48574, Nov. 26, 1985]

### § 416.1133 What is a pro rata share of household operating expenses.

(a) *General.* If you pay your pro rata share toward monthly household operating expenses, you are living in your own household and are not receiving in-kind support and maintenance from anyone else in the household. The one-third reduction, therefore, does not apply to you. (If you are receiving food or shelter from someone outside the household, we value it under the rule in § 416.1140.)

(b) *How we determine a pro rata share.* Your pro rata share of household operating expenses is the average monthly household operating expenses (based on a reasonable estimate if exact figures are not available) divided by the number of people in the household, regardless of age.

(c) *Average household operating expenses.* Household operating expenses are the household's total monthly expenditures for food, rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. (The term does not include the cost of these items if someone outside the household pays for them.) Generally, we average household operating expenses over the past

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12 months to determine a pro rata share.

[45 FR 65547, Oct. 3, 1980, as amended at 70 FR 6345, Feb. 7, 2005]

### § 416.1140 The presumed value rule.

(a) *How we apply the presumed value rule.* (1) When you receive in-kind support and maintenance and the one-third reduction rule does not apply, we use the presumed value rule. Instead of determining the actual dollar value of any food or shelter you receive, we presume that it is worth a maximum value. This maximum value is one-third of your Federal benefit rate plus the amount of the general income exclusion described in § 416.1124(c)(12).

(2) The presumed value rule allows you to show that your in-kind support and maintenance is not equal to the presumed value. We will not use the presumed value if you show us that—

(i) The current market value of any food or shelter you receive, minus any payment you make for them, is lower than the presumed value; or

(ii) The actual amount someone else pays for your food or shelter is lower than the presumed value.

(b) *How we determine the amount of your unearned income under the presumed value rule.* (1) If you choose not to question the use of the presumed value, or if the presumed value is less than the actual value of the food or shelter you receive, we use the presumed value to figure your unearned income.

(2) If you show us, as provided in paragraph (a)(2) of this section, that the presumed value is higher than the actual value of the food or shelter you receive, we use the actual amount to figure your unearned income.

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48575, Nov. 26, 1985; 58 FR 63888, Dec. 3, 1993; 70 FR 6345, Feb. 7, 2005]

### § 416.1141 When the presumed value rule applies.

The presumed value rule applies whenever we must count in-kind support and maintenance as unearned income and the one-third reduction rule does not apply. This means that the presumed value rule applies if you are living—

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(a) In another person's household (as described in §416.1132(b)) but not receiving both food and shelter from that person;

(b) In your own household (as described in §416.1132(c)). For exceptions, see §416.1142 if you are in a public assistance household and §416.1143 if you are in a noninstitutional care situation;

(c) In a nonmedical institution including any—

(1) Public nonmedical institution if you are there for less than a full calendar month;

(2) Public or private nonprofit educational or vocational training institution;

(3) Private nonprofit retirement home or similar institution where there is an express obligation to provide your full support and maintenance or where someone else pays for your support and maintenance. For exceptions, see §416.1144; and

(4) For-profit institution where someone else pays for your support and maintenance. If you or the institution pay for it, see §416.1145.

### **§416.1142 If you live in a public assistance household.**

(a) *Definition.* A public assistance household is one in which every member receives some kind of public income-maintenance payments. These are payments made under—

(1) Title IV-A of the Social Security Act (Temporary Assistance for Needy Families);

(2) Title XVI of the Social Security Act (SSI, including federally administered State supplements and State administered mandatory supplements);

(3) The Refugee Act of 1980 (Those payments based on need);

(4) The Disaster Relief and Emergency Assistance Act;

(5) General assistance programs of the Bureau of Indian Affairs;

(6) State or local government assistance programs based on need (tax credits or refunds are not assistance based on need); and

(7) U.S. Department of Veterans Affairs programs (those payments based on need).

(b) *How the presumed value rule applies.* If you live in a public assistance

household, we consider that you are not receiving in-kind support and maintenance from members of the household. In this situation, we use the presumed value rule only if you receive food or shelter from someone outside the household.

[45 FR 65547, Oct. 3, 1980, as amended at 57 FR 53850, Nov. 13, 1992; 70 FR 6345, Feb. 7, 2005; 70 FR 41137, July 18, 2005]

### **§416.1143 If you live in a noninstitutional care situation.**

(a) *Definitions.* For purposes of this subpart you live in a noninstitutional care situation if all the following conditions exist:

(1) You are placed by a public or private agency under a specific program such as foster or family care;

(2) The placing agency is responsible for your care;

(3) You are in a private household (not an institution) which is licensed or approved by the placing agency to provide care; and

(4) You, a public agency, or someone else pays for your care.

(b) *How the presumed value rule applies.* You are not receiving in-kind support and maintenance and the presumed value rule does not apply if you pay the rate the placing agency establishes. We consider this established rate to be the current market value for the in-kind support and maintenance you are receiving. The presumed value rule applies if you pay less than the established rate and the difference is paid by someone else other than a public or private agency providing social services described in §416.1103(b) or assistance based on need described in §416.1124(c)(2).

### **§416.1144 If you live in a nonprofit retirement home or similar institution.**

(a) *Definitions.* For purposes of this section the following definitions apply:

(1) *Nonprofit retirement home or similar institution* means a nongovernmental institution as defined under §416.1101, which is, or is controlled by, a private nonprofit organization and which does not provide you with—

(i) Services which are (or could be) covered under Medicaid, or

(ii) Education or vocational training.